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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/045,386	03/20/98	WALKER	J WD2-97-557
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LM02/0815

EXAMINER

NGUYEN, L

ART UNIT

PAPER NUMBER

2766

DATE MAILED:

08/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/045,386

Applicant(s)

WALKER ET AL.

Examiner

Leslie K. Nguyen

Art Unit

2766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 15-24 and 27-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-14, 25, 26 and 33-36 is/are allowed.
- 6) ☒ Claim(s) 1-8, 15-24 and 27-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) NA
- 18) ☒ Interview Summary (PTO-413) Paper No(s) \_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-36 have been examined.

#### *Specification*

2. The disclosure is objected to because of the following informalities: The serial numbers for the cross references to co-pending applications should be entered in the blanks corresponding to missing numbers.

Appropriate correction is required.

#### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-3, 15, and 17 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Oka in U.S. Pat. No. 5,408,210.
5. Oka discloses an invention for monitoring the line length at an electronic cash register that activates or deactivates a light in accordance with the line length comprising “means for informing a predetermined information to customers who are waiting for transaction; means for detecting the number of customers who are waiting for transaction; and means for controlling to drive the informing means when the number of customers detected by the detecting means exceeds a predetermined reference value” (column 1, lines 44-50). The Examiner asserts that

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Oka's "means for detecting the number of customers who are waiting for transaction" constitutes means for measuring an activity rate of a point-of-sale terminal. The Examiner also asserts that Oka's "means for informing a predetermined information to customers who are waiting for transaction" and Oka's "means for controlling to drive the informing means when the number of customers detected by the detecting means exceeds a predetermined reference value" constitutes means for performing a supplementary process in accordance with an activity rate (see col. 3, line 57 – col. 4, line 4). Claim 1 is therefore rejected in view of prior art.

6. As described above, Oka discloses an invention for monitoring the line length at an electronic cash register that will not activate a light if the number of people waiting in line for transaction is below a threshold value. The Examiner observes that the invention of Oka clearly measures a criterion, determines whether to disable a system for providing a supplementary process based on the criterion (if activity rate is greater than a predetermined threshold), and disables the system for providing a supplementary process as claimed by applicants (see col. 5, lines 26-38). Claims 2 and 15 are therefore rejected in view of prior art.

7. As described above, Oka discloses an invention for monitoring the line length at an electronic cash register that will activate a light if the number of people waiting in line for transaction reaches a threshold value. The Examiner observes that the invention of Oka clearly measures a criterion (if activity rate is less than a predetermined threshold), determines whether to enable a system for providing a supplementary process based on the criterion, and enables the system for providing a supplementary process as claimed by applicants (see col. 5, lines 18-25). Claims 3 and 17 are therefore rejected in view of prior art.

8. Claim(s) 5-7, 16, and 18 are apparatus for methods in claim(s) 1-3, 15, and 17, respectively, and are rejected on the same grounds as their respective claim(s).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oka in U.S. Pat. No. 5,408,210 as applied to claim 1 above, and further in view of Official Notice.

As addressed above, Oka discloses an invention that counts the number of customers at an electronic cash register (measures activity rate of a point-of-sale terminal) and then activates a lamp to indicate the line length at the electronic cash register based on the number of customers (performs supplementary process in accordance with the activity rate).

However, Oka does not disclose that the invention determines a predetermined threshold in dependence on a signal indicative of time of day.

The Examiner asserts that it is well known and takes Official Notice that grocery stores are busy during certain hours of the day (e.g. lunchtime, after normal work hours), and it is a common business practice to open additional checkout terminals in accordance to activity rate in the store. Customers are notified of the opening of a checkout terminal by activation of a light.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a means for determining a predetermined threshold in dependence on a signal indicative of time of day to provide a threshold for comparison with the activity rate of the electronic cash register. The obvious added functionality of automatically activating or deactivating a supplementary process at a sales terminal based on a predetermined threshold based on time of day would improve the invention of Oka.

11. Claim 8 is apparatus for a method in claim 4 and is rejected on the same grounds as its respective claim.

12. Claims 19, 20, and 23 are rejected under 35 U.S.C. 103(a) as being anticipated by Oka in U.S. Pat. No. 5,408,210, and further in view of Official Notice.

Oka, as previously discussed, discloses an invention for monitoring the line length at an electronic cash register that activates or deactivates a light in accordance with the line length.

However, Oka does not disclose a method comprising measuring an activity rate of a plurality of point-of-sale terminals and performing the supplementary process for at least one point-of-sale terminal.

The Examiner asserts that it is well known and takes Official Notice that multiple cash registers in grocery stores can be monitored and controlled by a central computer.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method comprising measuring an activity rate of a plurality of point-of-sale terminals and performing the supplementary process for at least one point-of-sale

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terminal. The obvious added functionality of a store having the capability for monitoring and controlling the actions at multiple sales terminals would clearly enhance the invention of Oka.

13. Claims 21, 22, and 24 are apparatus for methods in claims 19, 20, and 23, respectively, and are rejected on the same grounds as their respective claims.

14. Claims 27-29 are rejected under 35 U.S.C. 103(a) as being anticipated by Oka in U.S. Pat. No. 5,408,210, and further in view of Official Notice.

As discussed above, Oka discloses an invention for monitoring the line length at an electronic cash register that activates or deactivates a light in accordance with the line length.

However, Oka does not disclose a method in which an override signal is received and a supplementary process is performed in accordance with the override signal.

The Examiner asserts that it is well known and takes Official Notice that manual switches exist at cash registers in case difficulties arise at a terminal, allowing a cashier or manager to decide to deactivate the light until the terminal is operable (whereupon the light is once again activated).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include a method in which an override signal is received and a supplementary process is performed in accordance with the override signal. The obvious added functionality of the terminal having the ability to override a supplementary process enhances the invention of Oka.

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15. Claims 30, 31, and 32 are apparatus for methods in claims 27, 28, and 29, respectively, and are rejected on the same grounds as their respective claims.

*Allowable Subject Matter*

16. Claims 9-14 are allowed.

As discussed above, Oka discloses an invention that counts the number of customers at an electronic cash register (measures activity rate of a point-of-sale terminal) and then activates a lamp to indicate the line length at the electronic cash register based on the number of customers (performs supplementary process in accordance with the activity rate).

However, neither Oka nor other references disclose methods and apparatus for providing a supplementary product offer in accordance with the activity rate and an offer schedule; providing an offer schedule comprising a set of supplementary product offers, each supplementary product offer corresponding to a predetermined range of activity rates; and providing successively time-consuming supplementary product offers corresponding to successively greater ranges of activity rates as claimed by applicants.

17. Claims 25 and 26 are allowed.

As discussed above, Oka discloses an invention that counts the number of customers at an electronic cash register (measures activity rate of a point-of-sale terminal).

However, neither Oka nor other references disclose a method and apparatus for determining an upsell in dependence on a purchase, determining an upsell price in dependence



on a purchase, and offering to exchange the upsell price for the upsell if the activity rate is less than a predetermined threshold as claimed by applicants.

18. Claims 33 and 34 are allowed.

As discussed above, Oka discloses methods for controlling the performance of a supplementary process at a point-of-sale terminal and receiving an override signal.

However, neither Oka nor other references disclose a method and apparatus for determining an upsell in dependence of a supplemental process, determining an upsell price in dependence on the purchase, and offering to exchange the upsell price for the upsell if the override signal indicates performance of a supplemental process as claimed by applicants.

19. Claims 35 and 36 are allowed.

As previously addressed, Oka discloses a method for controlling the performance of a supplementary process at a point-of-sale terminal that includes means for measuring an activity rate of a point-of-sale terminal.


However, neither Oka nor other references disclose a method and apparatus for offering a second upsell having a first offer speed if the activity rate is below a first predetermined threshold and offering a second upsell having a second offer speed greater than the first offer speed if the activity rate is above a second predetermined threshold as claimed by applicants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie K. Nguyen whose telephone number is 703-306-5540. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 AM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gail O. Hayes can be reached on 703-305-9711. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-9051 for regular communications and 703-308-9051 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-7900.

Leslie K. Nguyen  
August 9, 2000

  
GAIL O. HAYES  
SUPERVISORY PATENT EXAMINER  
GROUP 2700